



U.S. Citizenship
and Immigration
Services

DL

FILE:

SRC 03 236 52368

Office: TEXAS SERVICE CENTER

Date: **AUG 04 2004**

IN RE:

Petitioner:
Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ukraine, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not offered documentation evidencing that she and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director (Corrected Copy)*, dated February 12, 2004.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

. . . shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation at section 214.2 does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on August 29, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 29, 2001 and ended on August 29, 2003.

The director determined that the petitioner last personally met the beneficiary on August 17, 2001, more than two years prior to the filing date of the Form I-129F petition.

On appeal, the petitioner submits a statement indicating that he suffered a serious injury that slowed his ability to write and therefore, delayed the filing of the Form I-129F petition. The petitioner submits a copy of a hospital discharge document to support this assertion. The petitioner also states that the beneficiary "had a problem with the papers" and the notary public whose services he utilized went on vacation. The petitioner further contends that he will undergo surgery as a result of his injury and requires care from the beneficiary for his recovery. *Form I-290B*, dated February 29, 2004.

The evidence of record does not establish that the petitioner and beneficiary met as required. The petitioner contends that he was not able to file the petition in the time allotted. The AAO notes that the petitioner is afforded two years from the date of meeting the beneficiary to file the Form I-129F petition. The record fails to establish that circumstances prevented the petitioner from filing during that entire time period. The AAO further notes that the submitted discharge document reflects that the petitioner was treated in December 2003, after the filing of the Form I-129F petition. The petitioner fails to demonstrate how an injury suffered after the filing of the petition impacted his ability to file the petition timely.

Further, the record does not establish that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The record fails to establish the extent of care required by the petitioner after his surgery and it fails to demonstrate that the beneficiary is the only person capable of caring for the petitioner after surgery. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.